

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

AMERICAN STORES PROPERTIES,  
INC., : CIVIL ACTION

: NO. 05-1461

Plaintiff,

v.

SPOTTS, STEVENS & MCCOY, INC.,  
et al.,

Defendants.

ORDER

FILED  
AUG 13 2009  
MICHAEL E. KUNZ, Clerk  
By \_\_\_\_\_ Dep. Clerk

AND NOW, this 13th day of August, 2009, upon consideration of the Defendant's Motion to Dismiss (Doc. No. 39), it is hereby ORDERED as follows:

1. Defendant's Motion to Dismiss is GRANTED as to Count IV of the Amended Complaint (negligent design);
2. Defendant's Motion to Dismiss is DENIED as to Counts I and III of the Amended Complaint (breach of contract and breach of warranty).
3. Pursuant to the Court's Opinion in this case filed on this date, Plaintiff may file an Amended Complaint consistent with the Opinions.

BY THE COURT:

*Joel Slomsky*  
JOEL H. SLOMSKY, J.